IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 5TH DECEMBER 2006 / 14TH AGRAHAYANA 1928

OP.No. 8849 of 2003(S)

PETITIONER:
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1. THE REGIONAL PROVIDENT FUND COMMISSIONER
PATTOM, TRIVANDRUM.

2. THE CENTRAL PROVIDENT FUND COMMISSIONER,
BHAVISHYANIDHI BHAVAN, 14,
BHIKAJI CAMA PLACE,
NEW DELHI.

3. EXECUTIVE COMMITTEE OF THE CENTRAL BOARD OF TRUSTEES,
EMPLOYEES' PROVIDENT FUND ORGANISATION
REPRESENTED BY ITS CHAIRMAN,
14,BHIKAJI CAMA PLACE
NEW DELHI.

4. THE REGIONAL PROVIDENT FUND COMMISSIONER
(HRM), HEAD QUARTER,
EMPLOYEES PROVIDENT FUND
ORGANISATION, BHAVISHYANIDHI BHAVAN, 14,
BHIKAJI CAMA PLACE, NEW DELHI.

BY ADV. SRI.N.N. SUGUNAPALAN, SC, P.F.

RESPONDENTS:
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1. M.VENKATESWARAN,
UPPER DIVISION CLERK (RETD.), OFFICE OF THE
REGIONAL PROVIDENT FUND COMMISSIONER,
PATTOM P.O., TRIVANDRUM.

2. A.SIGNI,
UPPER DIVISION CLERK,
OFFICE OF THE REGIONAL
PROVIDENT FUND COMMISSIONER,
PATTOM (P.O),
TRIVANDRUM.

3. A.GEORGE KUTTY,
UPPER DIVISION CLERK,
OFFICE OF THE REGIONAL
PROVIDENT FUND COMMISSIONER,
PATTOM, TRIVANDRUM.

4. S.CHRISTUDAS,
UPPER DIVISION CLERK,
OFFICE OF THE REGIONAL
PROVIDENT FUND COMMISSIONER,
PATTOM (P.O),
TRIVANDRUM.

5. SUNNY JOSEPH,
UPPER DIVISION CLERK,
OFFICE OF THE REGIONAL
PROVIDENT FUND COMMISSIONER,
PATTOM (P.O),
TRIVANDRUM.

6. A.LAWRENCE,
UPPER DIVISION CLERK,
OFFICE OF THE REGIONAL
PROVIDENT FUND COMMISSIONER,
PATTOM (P.O),
TRIVANDRUM.

7. S.LAKSHMANAN NADAR,
UPPER DIVISION CLERK,
OFFICE OF THE REGIONAL
PROVIDENT FUND COMMISSIONER,
PATTOM (P.O),
TRIVANDRUM.

8. V.SUKUMARAN NAIR,
UPPER DIVISION CLERK,
OFFICE OF THE REGIONAL
PROVIDENT FUND COMMISSIONER,
PATTOM (P.O),
TRIVANDRUM.

9. N.BABU,
UPPER DIVISION CLERK,
OFFICE OF THE REGIONAL
PROVIDENT FUND COMMISSIONER,
PATTOM (P.O),
TRIVANDRUM.

10. UNION OF INDIA,
REPRESENTED BY SECRETARY,
MINISTRY OF LABOUR,
GOVT. OF INDIA, NEW DELHI.

11. THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH,
REPRESENTED BY ITS REGISTRAR,
SASTHA TEMPLE ROAD, INDIRA NAGAR,
ERNAKULAM NORTH (P.O), KOCHI-18.

BY ADV. SRI.PAUL JACOB, ADDL.CGSC
SRI.G.SASIDHARAN CHEMPAZHANTHIYIL
SRI.S.VISHNU
SRI.MANOJ RAMASWAMY
SMT.VIVEEJA RAVEENDRAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 05/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1: TRUE COPY OF MEMORANDUM OF ORIGINAL APPLICATION IN O.A.NO.466/2000.

EXT.P2: ANNEXURE A1 PRODUCED IN O.A.82/1990 OF 11TH RESPONDENT DT. 27.2.91.

EXT.P3: TRUE COPY OF MINISTRY OF FINANCE O.M.NO.F-7-(52)-S-111 DT, 5.5.79

EXT.P4: TRUE COPY OF LETTER NO.ZCM(R.III)/31(6) 79/WB DT. 23.5.809 SENT BY THE 2ND PETITIONER.

EXT.P5: TRUE COPY OF CIRCULAR NO.KR/ADM/E-1(5)/91 DT. 26.03.91 ISSUED BY THE 1ST PETITIONER.

EXT.P6: TRUE COPY OF ORDER NO.220/IV IN FILE NO.KR/ADM E1(5)/92 DT. 10.11.92 ISSUED BY THE 1ST PETITIONER.

EXT.P7: TRUE COPY OF LETTER NO.ADM/R/III/31/6/79/WB DT. 1.7.80 SENT BY THE 2ND PEITIONER.

EXT.P8: TRUE COPY OF LETTER NO.P.IV/III(97)97/5246 DT. 2.9.99 ISSUED BY THE 4TH PETITIONER.

EXT.P9: TRUE COPY OF CIRCULAR NO.KR/AIM-I(5)99 DT. 23.4.99 ISSUED BY THE 1ST PETITIONER.

EXT.P10: TRUE COPY OF ORDER NO.HRM-II/39(5)99 DT. 31.1.02.

Ext.P11 TRUE COPY OF ORDER NO.100/2000 REFERENCE FILE NO.KR/ADM/I(III)ASSISTANTS/2000

Ext.P12 TRUE COPY OF REPRESENTATION DATED 24.4.2000.

Ext.P13 TRUE COPY OF REPLY STATEMENT FILED BY THE PETITIONERS BEFORE THE 11TH RESPONDENT, IN O.A.466 OF 200.

Ext.P14 TRUE COPY OF LETTER NO.P.IV/1/(14)/84/A DT. 24.7.87 ISSUED BY THE OFFICE OF THE 2ND PETITIONER.

Ext.P15 TRUE COPY OF RECRUITMENT RULES FOR THE POST OF LOWER DIVISION CLERK.

Ext.P16 TRUE COPY OF FINAL SENIORITY LIST OF UPPER DIVISION CLERKS FOR KERALA REGION AS ON 31.12.89.

Ext.P17 TRUE COPY OF ORDER OF THE 11TH RESPONDENT DATED 11.7.2002 IN O.A.466 OF 2000.

RESPONDENTS' EXHIBITS:

EXT.R1(A): TRUE COPY OF THE CIRCULAR NO.KR/ADM E 1(5)/ 95 DATED 25.10.1995 OF THE 1ST PETITIONER.

sk/-

//true copy//

P.S. To Judge.

K.A.ABDUL GAFOOR &
K.R.UDAYABHANU, JJ.

O.P.No.8849 of 2003 S

Dated this the 5th day of December, 2006.

JUDGMENT

Abdul Gafoor, J.

The Regional Provident Fund Commissioner and his officers are the writ petitioners. They are aggrieved by Ext.P17 judgment of the Central Administrative Tribunal, Ernakulam Bench, whereby clarification No.3 contained in Ext.A9 was quashed and the respondents/applicants before the tribunal and similarly situated persons drawing the special pay against the newly created posts of Assistants were directed to be considered for posting them as laid down in Ext.A7 produced before the tribunal.

2. The applicants before the tribunal were holding the identified posts of Upper Division Clerks with a special pay of Rs.140/- in the scale of pay of Rs.4,000-6000. They were admittedly non-matriculates. The Vth pay commission revised the

scale of pay of Upper Division Clerks at Rs.5000-8000 and abolished the special pay. It was also provided that 10% of the identified posts shall be designated as Assistants. Ext.P8 order contained the modality for posting the incumbents in the identified posts of Upper Division Clerks in the newly created posts of Assistants. While working out Ext.P8 there arose a doubt for the petitioners as to whether non-matriculates could be allowed to hold the post of Assistants. This resulted in a clarification as contained in Ext.P10. The relevant portion is as follows:

> **"No. As per the Head Quarters instructions, no non-matriculate official is to be promoted beyond UDC."**

3. Following this clarification, only the matriculates working as Upper Division Clerks were being considered in the newly created posts of Assistants in the scale of pay of Rs.5,000-8000. This

was impugned by the respondents herein before the tribunal contending that no separate qualification than those required to hold the post of Upper Division Clerks had been insisted in Ext.P8 for being posted as Assistants. The super-imposition of qualification of matriculation based on Ext.P10 clarification was thus illegal.

4. The tribunal found that as per Ext.P8 order which governed the creation as well as the posting of Assistants, eligible and suitable incumbent based on seniority can be posted as Assistants, as no separate qualification was insisted upon. Therefore, the clarification was incompetent. Accordingly, it was quashed and the applicants were directed to be considered.

5. This is impugned in this writ petition mainly contending that insistence of a minimum qualification for being posted as Assistants by the

persons is not unjustified and that those who did not have that qualification cannot seek consideration for posting as Assistants. Therefore, the finding made by the tribunal was not justified.

6. We are unable to accept the contention of the petitioners. Admittedly, the applicants before the tribunal were holding the post of Upper Division Clerk. Further admittedly, Ext.P8 is the circular governing the posting of the incumbents working in the identified posts of Upper Division Clerks as Assistants. No separate academic qualification is insisted therein. The petitioners herein did not have a case that the applicants before the tribunal below had been considered and found unfit. They have been superseded by their juniors only on the ground that they did not possess matriculation.

7. When no separate qualification is insisted in Ext.P8 for such posts, necessarily, the super-

imposition of such a condition by Ext.P10 clarification is illegal. This aspect is squarely covered by the decision of the Apex Court in the decision reported in **District *Registrar v. M.B.Koyakutty {1979 (1) S.C. 1060}***, wherein it has been held that:

> ***"It will bear repetition that the preamble to the Rules and Rule 1 in Part II, indicate that all the previous rules have been superseded. These General Rules do not provide any minimum general educational qualification for promotion to the cadre of Upper Division Clerks from that of a Lower Division Clerks. All that is required by Rule 28(b)(ii) which governs the promotions from the Lower Division to the Upper Division is that promotions shall be made in accordance with seniority subject to the person's fitness for appointment. There is nothing in this sub-rule or elsewhere which provides that a member of the Lower Division will be presumed to be unfit for promotion to the Upper Division unless he possesses the minimum general educational qualification, or passes a qualifying test. It is conceivable that the State Government may***

prescribe a general test for all Clerks of the Lower Division to judge their fitness for promotion to the Upper Division. But, such is not the case here. The respondent and the others like him who were appointed as Lower Division Clerks after granting them exemption from possessing the minimum general educational qualification, have been singled out for this discriminatory treatment. There is nothing on the record to show that the case of the respondent was considered for promotion and he was found unfit."

In the light of this ruling, the impugned judgment of the tribunal cannot be said to be unjustified to invite interference from our hands. Original petition fails, dismissed.

Sd/-
(K.A.ABDUL GAFOOR)
JUDGE

Sd/-
(K.R.UDAYABHANU)
JUDGE

sk/

//true copy//

K.A.ABDUL GAFOOR &
K.R.UDAYABHANU, JJ.

O.P.No.8849 of 2003 S

JUDGMENT

5th December, 2006.